



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 18, 1998

Mr. Michael Currie
Henslee, Fowler & Hepworth
800 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701-2443

OR98-2232

Dear Mr. Currie:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 118223.

The Joaquin Independent School District (the "district") received a request for information "relating to the district's accreditation or performance on file with TEA for the past five years." You state that you will release some of the requested information. However, you claim that some of the requested information is excepted from disclosure under sections 552.101, 552.111, and 552.114 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted representative sample of documents.²

Initially, you claim that many of the submitted documents are excepted from disclosure under section 552.111. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section

¹You did not raise your sections 552.103 or 552.116 claims within the statutory ten business day period. Gov't Code 552.301. Consequently, you have waived these exceptions.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. Most of the documents you have submitted do not appear to be "internal" records of the district. Furthermore, these documents are purely factual in nature. Consequently, you may not withhold any of the submitted records under section 552.111.

You also contend that some of the requested documents are educational records that must be withheld pursuant to sections 552.026 and 552.114 of the Government Code. Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

The Family Educational Rights and Privacy Act of 1974 ("FERPA") provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information (other than directory information) contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

We note that information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). We have reviewed the submitted documents and have marked the information that must be withheld pursuant to sections 552.026 and 552.114.

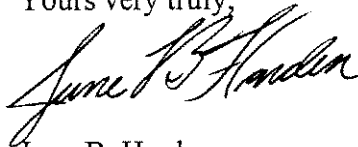
You also seek to withhold the names and addresses of the members of the district's Board of Trustees. Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of current or former government employees, officials and peace officers, as well as information revealing whether those employees, officials, or officers have family members. Therefore, section 552.117 requires you to withhold this information if a current or former

official requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold this information of a current or former official who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989)

Finally, you argue that some of the requested documents are confidential under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides, "Any document evaluating the performance of a teacher or administrator is confidential." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). After reviewing the documents at issue, we conclude that the documents are not teacher evaluations and may not be withheld under section 21.355 of the Education Code

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied on as a previous determination regarding any other records. If you have any questions regarding this ruling, please contact our office.

Yours very truly,



June B. Harden
Assistant Attorney General
Open Records Division

JBH/ch

Ref.: ID# 118223

Enclosures: Marked documents

cc: Mr. Lynn Tran
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(w/o enclosures)